

respect of the moneys claimed to have been advanced by the plaintiffs to the Dominion Linen Manufacturing Company, Limited.

It was contended on behalf of the defendants in support of the third party notice that the liability of directors to contribute is governed by sec. 108 of the Companies Act, which is as follows:

"Every person who by reason of his being a director or named as a director, or as having agreed to become a director, or as having authorized the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract from any other person, who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of a fraudulent misrepresentation."

The English provision as to liability of the directors to contribute is contained in The Directors' Liability Act (1890) sec. 5, which is substantially the same as sec. 108 above referred to with the exception that the English Act does not contain the words: "unless the person who has become so liable was, and that other person was not, guilty of a fraudulent misrepresentation."

Section 5 of the Directors' Liability Act (1890), was construed in *Shepherd v. Bray* (1906), 2 L. R. Ch. D. 235, where it was held that the right of contribution in as much as under the statute it arose as if from contractual relations between the parties can be enforced against the estate of deceased directors, and that the defendants must pay with interest their share.

I think that if the third party notice can be upheld, it must be upheld on a different ground than that contained in the provisions of the Companies Act.

This action is brought against the defendants for breach of trust committed by the late Christian Kleopfer as a director of the plaintiff company.

I think that the action is properly brought as the liability of a director for breach of trust can be enforced by action against his estate after his death. It is clear that the death of a director does not take away the right of the company arising in respect to his breaches of trust, and his